



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2015-0309; FRL-9941-82-OAR]

RIN 2060-AS68

Protection of Stratospheric Ozone: Revisions to Reporting and Recordkeeping for Imports and Exports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on minor conforming edits to the stratospheric protection regulations to implement the International Trade Data System. This system allows businesses to transmit the transactional data required by multiple Federal agencies for the import and export of cargo through a single “window.” As businesses currently must submit trade data to multiple agencies, in multiple ways, and often on paper, the transition to electronic filing is expected to save businesses time and money. Specifically, this rule removes the requirement that the petition for used ozone-depleting substances accompany the shipment through U.S. Customs and removes references to Customs forms that are obsolete under the new system.

DATES: This rule is effective on **[insert date 90 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2015-0309, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Jeremy Arling by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205T), 1200 Pennsylvania Avenue, NW, Washington, DC, 20460; by telephone: (202) 343-9055; or by email: arling.jeremy@epa.gov. You may also visit the EPA's Ozone Protection Web site at www.epa.gov/ozone/strathome.html for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other related topics.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Why Is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This rule is intended to make minor changes like the removal of references to U.S. Customs forms that will no longer be available when the electronic International Trade Data System is implemented. However, in the “Proposed Rules” section of today’s Federal Register, we are publishing a separate document that will serve as the proposed rule to make these edits if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the ADDRESSES section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

B. Does this Action Apply to Me?

This rule may affect the following categories: Industrial Gas Manufacturing entities (NAICS code 325120), including fluorinated hydrocarbon gas manufacturers, importers, and exporters; Other Chemical and Allied Products Merchant Wholesalers (NAICS code 424690), including chemical gases and compressed gases merchant importers and exporters; and refrigerant reclaimers or other such entities that might import virgin, recovered, or reclaimed refrigerant gas.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility, company, business, or organization could be regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

C. Overview of the International Trade Data System

In 2006, U.S. Customs and Border Protection (CBP) began automating processes for the import and export of goods to improve the control of what enters and leaves the U.S., as well as to improve efficiency. Launched under the Security and Accountability for Every Port Act of 2006 (SAFE Port Act, Pub. L. 109-347) and the 2007 Import Safety Executive Order 13439, the multi-agency program called the International Trade Data System (the ITDS) assists 48 Federal agencies with import/export responsibilities in their efforts to integrate import and export cargo processing with CBP's Automated Commercial Environment (ACE) for imports, and the Automated Export System (AES) for exports.

On February 19, 2014, the White House issued E.O. 13659 titled "Streamlining the Export/Import Process for America's Businesses." Under E.O. 13659, participating agencies must have all requirements in place and in effect to utilize the ITDS, which includes the ACE and the AES systems for receiving documentation required for the release of imported cargo and the clearance of cargo for export, no later than December 31, 2016.

Under the ITDS, agencies with existing paper-based import and export clearance procedures at the port of exit or entry are working with CBP to enable electronic filing and

processing of the import or export shipments based on one set of submitted data that can then be checked against all relevant U.S. agency requirements.

D. Overview of import requirements under the stratospheric protection program

The *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol, or Protocol) is the international agreement to reduce and eventually eliminate the global production and consumption¹ of ozone-depleting substances (ODS). This goal is accomplished through adherence by each Party to the Protocol to phaseout schedules for specific controlled substances. The Montreal Protocol is implemented in the United States through Title VI of the Clean Air Act. EPA issues allowances for the production and consumption of ODS under sections 604 and 605 of the Clean Air Act. An allowance represents the privilege granted to a company to produce or import one kilogram of the specific substance in a given year. EPA establishes the number of allowances issued to companies through rulemaking. EPA maintains a balance of unexpended allowances through the ODS Tracking System based on production, import, and export data reported to the Agency quarterly.

At the present time, allowances are required for the import of class II controlled substances, all of which are hydrofluorocarbons (HCFCs), and for the import of methyl bromide for critical uses. Allowances are not required, however, for the import of used controlled substances. Used controlled substances are defined as “substances that have been recovered from their intended use systems (may include controlled substances that have been, or may be subsequently, recycled or reclaimed)” (40 CFR 82.3). Imports of used controlled substances are regulated under §82.13(g)(2) (for imports of used Class I

¹ “Consumption” is defined as the amount of a substance produced in the United States, plus the amount imported into the United States, minus the amount exported from the United States to other Parties to the Montreal Protocol (see section 601(6) of the Clean Air Act).

controlled substances) and §82.24(c)(3) (for imports of used Class II controlled substances). Persons seeking to import used controlled substances are required to submit a petition to the Agency. The petition to import a used controlled substance must contain detailed information such as the previous use of the substance, including the identity of all previous source facilities from which the material was recovered. After review, EPA issues either a “non-objection notice” allowing the import to proceed or an “objection notice” prohibiting the import.

II. How is EPA integrating ODS import and export requirements with the ITDS?

For purposes of the ITDS, there are three pathways for the import of ozone depleting substances: imports that require allowances; imports that require a “non-objection” notice issued by EPA; and imports that do not require any documentation to be reviewed by CBP officers. The distinctions between these three categories relate to the type of documentation reviewed by CBP upon entry of the shipment. In all instances the recordkeeping and quarterly and/or annual reporting requirements under 40 CFR part 82, subpart A continue to apply.

A. Imports that require allowances

Importers are not required to present documentation of allowances to CBP upon import. Some companies choose to include allowance balance statements provided by EPA with documentation accompanying the import. This is not a requirement of EPA’s regulations but is done by the importer to facilitate the entry of the shipment. Under the ITDS, providing a paper copy of an allowance statement will be unnecessary as information being provided for the CBP entry and TSCA certification parts of the filing allow EPA to verify whether the importer has an allowance for the import.

EPA is not changing the reporting and recordkeeping requirements in 40 CFR part 82, subpart A to integrate these ODS imports into the ITDS. Importers are not required to provide a statement of allowances to CBP and this would not change under the ITDS.

B. Imports that require a non-objection notice

For imports of used controlled substances, current regulations require that the petition and non-objection notice “accompany the shipment through U.S. Customs.” EPA is removing the requirement that the petition accompany the shipment through U.S. Customs. EPA does not believe that the detailed information in a petition to import used ODS is necessary for CBP to make a determination about whether the import should enter the U.S. EPA’s decision to allow an import of used ODS is stated in the non-objection notice. Therefore, EPA would still require that the non-objection notice accompany the shipment through Customs.

One component of the ITDS is the Document Image System (DIS) which allows the importer or their broker to file and an agency to view the image of a document, as it appears on paper, without paper needing to physically be provided. Under the ITDS, the non-objection notice would be filed to the DIS. Because this document would be available to CBP, EPA finds that filing a non-objection notice to the DIS meets the requirements in §82.13(g)(3)(v) and §82.24(c)(4)(v) that the non-objection notice “accompany the shipment.” Therefore, the only change EPA is making to the recordkeeping and reporting requirements in 40 CFR part 82, subpart A to implement the ITDS is to remove the requirement that the petition accompany the shipment.

C. Imports without CBP documentation

A third category of ODS imports do not require verification by CBP. These include ODS that fall under the following exemptions: imports for purposes of transformation or destruction; imports for laboratory and analytical uses; heels or transshipments; and methyl bromide imported under the quarantine and preshipment exemption. EPA is not making any changes to the reporting and recordkeeping requirements in 40 CFR part 82, subpart A to integrate these ODS imports into the ITDS.

D. Other changes to conform to the ITDS

EPA is making minor changes to the stratospheric protection regulations at 40 CFR part 82, subpart A, to remove references to U.S. Customs Service forms that will no longer exist when the ITDS is implemented.

Definition of Importer

The definition of importer at 40 CFR 82.3 and 82.104 includes the importer of record “listed on U.S. Customs Service forms” for the import. The definition of importer would still include the importer of record but because CBP will no longer be maintaining forms, EPA is removing the clause referencing the Customs Service forms. This change does not affect the scope of who would be considered an importer for the purposes of 40 CFR part 82.

Recordkeeping and Reporting Requirements

The recordkeeping and reporting requirements at 40 CFR 82.13(g)(1) and 82.24(c)(2) state that an importer of Class I and Class II controlled substances, respectively, must maintain the U.S. Customs entry form. Under the ITDS, the entry form will no longer exist. EPA uses the Customs entry form to verify that a shipment of ODS has been properly imported into the United States. EPA believes that some type of

verifying information is necessary and to the benefit of the importer if the origin of the controlled substance is ever in question. In order for the Agency to identify an individual shipment within the ITDS, EPA is replacing the requirement to keep a record of the Customs form with the requirement to keep a record of the entry number. This will still be generated by the ITDS and will help EPA to identify the specific shipment within the ITDS.

Similarly, the recordkeeping and reporting requirements at 40 CFR 82.13(g)(3)(viii) and 82.24(c)(4)(viii) state that an importer of used Class I and Class II controlled substances, respectively, must maintain the U.S. Customs entry documents for the import. For the reasons discussed above, EPA is removing the recordkeeping requirements for the U.S. Customs entry documents but is substituting the requirement to maintain the entry number for the shipment of used ODS.

In addition, reporting requirements for exporters of class II substances under §82.24(d)(2) (related to export production allowances) or §82.24(d)(3) (related to Article 5 allowances) reference the Shipper's Export Declaration Form and U.S. Customs Form 7525 as locations for the Employer Identification Number (EIN) of the shipper or their agent. EPA is removing references to these two forms but is maintaining the requirement that the EIN be provided.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA because the requirements to maintain entry numbers and EINs are a subset of the previous requirements to maintain forms containing this information. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0170 and 2060-0438.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action makes minor changes to recordkeeping and reporting requirements to remove references to U.S. Customs forms and other small edits.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action merely makes minor changes to recordkeeping and reporting requirements to remove references to U.S. Customs forms and other small edits.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose any enforceable duties on communities of Indian tribal governments. This action makes minor changes to recordkeeping and reporting requirements to remove references to U.S. Customs forms and other small edits. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action makes minor changes to recordkeeping and reporting requirements to remove references to U.S. Customs forms and other small edits.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations because it does not affect the level of protection provided to human health or the environment. This action makes minor changes to recordkeeping and reporting requirements to remove references to U.S.

Customs forms and other small edits.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Imports, Ozone, Reporting and recordkeeping requirements.

Dated: January 21, 2016.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, 40 CFR part 82 is amended as follows:

PART 82-PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671-7671q.

2. In §82.3, revise the definition for “Importer” to read as follows:

§ 82.3 Definitions for class I and class II controlled substances.

Importer means any person who imports a controlled substance or a controlled product into the United States. “Importer” includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes, as appropriate:

- (1) The consignee;
- (2) The importer of record;
- (3) The actual owner; or
- (4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.

3. In § 82.13, revise paragraphs (g)(1)(xii), (g)(3)(v), and (g)(3)(viii)(D) to read as follows:

§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.

(g) ***

(1) ***

(xii) The U.S. Customs entry number;

(3) ***

(v) To pass the approved used class I controlled substances through U.S. Customs, the non-objection notice issued by EPA must accompany the shipment through U.S. Customs.

(viii) ***

(D) The U.S. Customs entry number.

4. In § 82.24, revise paragraphs (c)(2)(xiii), (c)(4)(v), (c)(4)(viii)(D), (d)(2)(i), and (d)(3)(i) to read as follows:

§ 82.24 Recordkeeping and reporting requirements for class II controlled substances.

(c) ***

(2) ***

(xiii) The U.S. Customs entry number;

(4) ***

(v) To pass the approved used class II controlled substances through U.S. Customs, the non-objection notice issued by EPA must accompany the shipment through U.S. Customs.

(viii) ***

(D) The U.S. Customs entry number.

(d) ***

(2) ***

(i) The Employer Identification Number of the shipper or their agent;

(3) ***

(i) The Employer Identification Number of the shipper or their agent; and

5. In § 82.104, revise paragraph (m)(2) to read as follows:

§ 82.104 Definitions.

(m) ***

(2) The importer of record;

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